

SECOND REGULAR SESSION

# HOUSE BILL NO. 1431

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SOMMER.

4203H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 217.690 and 557.011, RSMo, and to enact in lieu thereof two new sections relating to sentencing of illegal aliens, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 217.690 and 557.011, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 217.690 and 557.011, to read as follows:

217.690. 1. When in its opinion there is reasonable probability that an offender of a correctional center can be released without detriment to the community or to himself, the board may in its discretion release or parole such person except as otherwise prohibited by law. All paroles shall issue upon order of the board, duly adopted.

2. Before ordering the parole of any offender, the board shall have the offender appear before a hearing panel and shall conduct a personal interview with him, unless waived by the offender. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or a pardon. An offender shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every offender while on parole shall remain in the legal custody of the department but shall be subject to the orders of the board.

3. The board has discretionary authority to require the payment of a fee, not to exceed sixty dollars per month, from every offender placed under board supervision on probation, parole, or conditional release, to waive all or part of any fee, to sanction offenders for willful nonpayment of fees, and to contract with a private entity for fee collections services. All fees collected shall be deposited in the inmate fund established in section 217.430. Fees collected may be used to pay the costs of contracted collections services. The fees collected may otherwise

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 be used to provide community corrections and intervention services for offenders. Such services  
19 include substance abuse assessment and treatment, mental health assessment and treatment,  
20 electronic monitoring services, residential facilities services, employment placement services,  
21 and other offender community corrections or intervention services designated by the board to  
22 assist offenders to successfully complete probation, parole, or conditional release.

23 The board shall adopt rules not inconsistent with law, in accordance with section 217.040, with  
24 respect to sanctioning offenders and with respect to establishing, waiving, collecting, and using  
25 fees.

26       4. The board shall adopt rules not inconsistent with law, in accordance with section  
27 217.040, with respect to the eligibility of offenders for parole, the conduct of parole hearings or  
28 conditions to be imposed upon paroled offenders. Whenever an order for parole is issued it shall  
29 recite the conditions of such parole.

30       5. When considering parole for an offender with consecutive sentences, the minimum  
31 term for eligibility for parole shall be calculated by adding the minimum terms for parole  
32 eligibility for each of the consecutive sentences, except the minimum term for parole eligibility  
33 shall not exceed the minimum term for parole eligibility for an ordinary life sentence.

34       6. Any offender under a sentence for first degree murder who has been denied release  
35 on parole after a parole hearing shall not be eligible for another parole hearing until at least three  
36 years from the month of the parole denial; however, this subsection shall not prevent a release  
37 pursuant to subsection 4 of section 558.011.

38       7. Parole hearings shall, at a minimum, contain the following procedures:

39       (1) The victim or person representing the victim who attends a hearing may be  
40 accompanied by one other person;

41       (2) The victim or person representing the victim who attends a hearing shall have the  
42 option of giving testimony in the presence of the inmate or to the hearing panel without the  
43 inmate being present;

44       (3) The victim or person representing the victim may call or write the parole board rather  
45 than attend the hearing;

46       (4) The victim or person representing the victim may have a personal meeting with a  
47 board member at the board's central office;

48       (5) The judge, prosecuting attorney or circuit attorney and a representative of the local  
49 law enforcement agency investigating the crime shall be allowed to attend the hearing or provide  
50 information to the hearing panel in regard to the parole consideration; and

51       (6) The board shall evaluate information listed in the juvenile sex offender registry  
52 pursuant to section 211.425, provided the offender is between the ages of seventeen and  
53 twenty-one, as it impacts the safety of the community.

54 8. The board shall notify any person of the results of a parole eligibility hearing if the  
55 person indicates to the board a desire to be notified.

56 9. The board may, at its discretion, require any offender seeking parole to meet certain  
57 conditions during the term of that parole so long as said conditions are not illegal or impossible  
58 for the offender to perform. These conditions may include an amount of restitution to the state  
59 for the cost of that offender's incarceration.

60 10. Nothing contained in this section shall be construed to require the release of an  
61 offender on parole nor to reduce the sentence of an offender heretofore committed.

62 11. Beginning January 1, 2001, the board shall not order a parole unless the offender has  
63 obtained a high school diploma or its equivalent, or unless the board is satisfied that the offender,  
64 while committed to the custody of the department, has made an honest good-faith effort to obtain  
65 a high school diploma or its equivalent; provided that the director may waive this requirement  
66 by certifying in writing to the board that the offender has actively participated in mandatory  
67 education programs or is academically unable to obtain a high school diploma or its equivalent.

68 12. **No illegal alien who has been incarcerated at a correctional center shall be**  
69 **ordered to be released from the correctional center on parole until the alien has served his**  
70 **or her sentence in its entirety if the offender is unable to serve the parole period in the**  
71 **United States.**

72 13. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
73 created under the authority delegated in this section shall become effective only if it complies  
74 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
75 This section and chapter 536 are nonseverable and if any of the powers vested with the general  
76 assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and  
77 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and  
78 any rule proposed or adopted after August 28, 2005, shall be invalid and void.

557.011. 1. Every person found guilty of an offense shall be dealt with by the court in  
2 accordance with the provisions of this chapter, except that for offenses defined outside this code  
3 and not repealed, the term of imprisonment or the fine that may be imposed is that provided in  
4 the statute defining the offense; however, the conditional release term of any sentence of a term  
5 of years shall be determined as provided in subsection 4 of section 558.011.

6 2. Whenever any person has been found guilty of a felony or a misdemeanor the court  
7 shall make one or more of the following dispositions of the offender in any appropriate  
8 combination. The court may:

- 9 (1) Sentence the person to a term of imprisonment as authorized by chapter 558;  
10 (2) Sentence the person to pay a fine as authorized by chapter 560;  
11 (3) Suspend the imposition of sentence, with or without placing the person on probation;

12 (4) Pronounce sentence and suspend its execution, placing the person on probation;  
13 (5) Impose a period of detention as a condition of probation, as authorized by section  
14 559.026.

15 3. Whenever any person has been found guilty of an infraction, the court shall make one  
16 or more of the following dispositions of the offender in any appropriate combination. The court  
17 may:

18 (1) Sentence the person to pay a fine as authorized by chapter 560;  
19 (2) Suspend the imposition of sentence, with or without placing the person on probation;  
20 (3) Pronounce sentence and suspend its execution, placing the person on probation.

21 4. Whenever any organization has been found guilty of an offense, the court shall make  
22 one or more of the following dispositions of the organization in any appropriate combination.  
23 The court may:

24 (1) Sentence the organization to pay a fine as authorized by chapter 560;  
25 (2) Suspend the imposition of sentence, with or without placing the organization on  
26 probation;  
27 (3) Pronounce sentence and suspend its execution, placing the organization on probation;  
28 (4) Impose any special sentence or sanction authorized by law.

29 5. **Notwithstanding subsections 2 and 3 of this section to the contrary, any illegal**  
30 **alien who has committed a felony, misdemeanor, or infraction in this state shall be**  
31 **sentenced to a term of imprisonment or shall be sentenced to pay a fine but shall not**  
32 **receive a suspended imposition of sentence, suspended execution of sentence, conditional**  
33 **release, or probation for the offense if the alien is unable to serve the entire sentence,**  
34 **release, or probation period within the United States.**

35 6. This chapter shall not be construed to deprive the court of any authority conferred by  
36 law to decree a forfeiture of property, suspend or cancel a license, remove a person from office,  
37 or impose any other civil penalty. An appropriate order exercising such authority may be  
38 included as part of any sentence.

39 [6.] 7. In the event a sentence of confinement is ordered executed, a court may order that  
40 an individual serve all or any portion of such sentence on electronic monitoring; except that all  
41 costs associated with the electronic monitoring shall be charged to the person on house arrest.  
42 If the judge finds the person unable to afford the costs associated with electronic monitoring, the  
43 judge may order that the person be placed on house arrest with electronic monitoring if the  
44 county commission agrees to pay the costs of such monitoring. If the person on house arrest is  
45 unable to afford the costs associated with electronic monitoring and the county commission does  
46 not agree to pay from the general revenue of the county the costs of such electronic monitoring,  
47 the judge shall not order that the person be placed on house arrest with electronic monitoring.